IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

Crl.MC.No. 1936 of 2007()

SC.688/2002 of ADDL.SESSIONS COURT (ADHOC), ALAPPUZHA
CC.48/2006 of JUDL. MAGISTRATE OF FIRST CLASS-II, HARIPAD

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PETITIONER: ACCUSED:

ANILKUMAR @ MADHU,AGED 35, S/O.MADHAVAN,
MADTHIELATHU THARAYIL VEEDU, POONAGAM P.O.,
MAVELLIKKARA.

BY ADV. SRI.S.GIRISH

RESPONDENTS: COMPLAINANT;

STATE OF KERALA, REPRESENTED BY THE
S.I. OF POLICE, HARIPAD POLICE STATION,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**Crl.M.C.No.1936 of 2007**

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Dated this the 18th day of June, 2007

**ORDER**

Against the petitioner final report has been filed alleging commission of the offence punishable under Section 406 I.P.C. Petitioner's marriage took place on 28.01.99. His wife allegedly committed suicide on 26.03.2002. He faced allegations under Sections 498 A and 306 I.P.C and was ultimately found not guilty and acquitted. Long later, the present allegation has been raised. A crime was registered. The petitioner was granted anticipatory bail by this Court. Investigation is now complete and the final report has been filed. Cognizance has been taken of the offence punishable under Section 406 I.P.C.

2. The petitioner has come to this Court with a prayer that powers under Section 482 Cr.P.C may be invoked to quash the proceedings. What are the reasons ? The learned counsel for the petitioner raises two contentions. First of all it is contended that cognizance is barred by limitation. Secondly it is contended that in the earlier complaint under Sections 498 A and 306 I.P.C, those allegations have not been raised at all, allegedly leading to the irresistible inference that present allegations are false.

3. I must alertly remind myself of the nature, quality and contours of the jurisdiction of this Court under Section 482 Cr.P.C. The jurisdiction which is sought to be invoked is the extraordinary inherent jurisdiction. Such jurisdiction is not to be invoked as a matter of course. It is to be invoked only sparingly and in exceptional cases, that too only in aid of justice. The simple fact that the accused may be entitled for discharge or acquittal at later stages, cannot and ought not by itself persuade this Court to invoke such jurisdiction under Section 482 Cr.P.C. Having rendered my anxious consideration to all the relevant inputs, I am certainly of the opinion that this is a fit case where the petitioner can be relegated to claim discharge or acquittal as the case may be before the trial court. It is submitted that the petitioner has already entered appearance before the learned Magistrate.

4. In the result, this Crl.M.C is, dismissed, but I may hasten to observe that the dismissal of this Crl.M.C will not in any way fetter the rights of the petitioner to claim discharge/acquittal at later stages and I have not intended to express any opinion on those aspects. I have only chosen to hold that this is not a fit case where the powers under Section 482 Cr.P.C can or ought to be invoked.

5. The learned counsel for the petitioner submits that unnecessary insistence on personal appearance of the petitioner on all

dates of posting, would cause great hardship, difficulty and inconvenience to the petitioner. I have no reason to assume that the learned Magistrate would insist on such unnecessary personal appearance. The petitioner need appear personally only when the court directs so. Such directions need be issued only when the progress of the case demands such personal appearance of the petitioner. On all other dates, until a decision is taken on the question of framing charge at the stage of Section 239/240 Cr.P.C, the petitioner shall be permitted to appear through counsel.

**(R.BASANT, JUDGE)**

rtr/-